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Supreme Court of the United States

October Term, 1957

No. 505

INSTITUTO CUBANO DE ESTABILIZACION DEL AZUCAR,

Petitioner,

vs.

T/V GOLDEN WEST; SKIBS A/S GOLDEN WEST,

Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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PETITIONER'S REPLY

Grossly mistaken about the simple facts of *Marine Transit Corp.* v. *Dreyfus*, 284 U. S. 263, with which the decision below conflicts, respondent is also confused about the legal significance of the conceded facts on which the courts below avowedly based their denial of arbitration in this case.

Contrary to the assertions made on page 5 of respondent's brief, this court precisely stated in the *Marine Transit* case, 284 U. S. at page 268, that the provision for arbitration was contained in a form of charterparty incorporated by reference into the "booking contract" executed by the shipowner and the shipper. Because the provisions of the extrinsic, unexecuted form of charterparty, including its provision for arbitration, became an integral part of the booking contract when incorporated therein by reference, the careful author of this court's opinion, after pointing out how the integration had been effected, made no distinction btween the two documents.

The substantial identity between the facts of that case and the facts of this case is amply disclosed by the opinions

below, whose recitals are curiously obscured but in no respect challenged by respondent. Thus:

1. Respondent accusingly concedes on page 2 of its brief that the shipping company's voyage charterparty with petitioner contained the arbitration provision which is quoted in part by the Court of Appeals (petition, p. 2a), and is fully set out on page 14a of the petition.

2. Manifestly respondent's bills of lading, from which the Court of Appeals quoted (petition, p. 2a) and a specimen of which is copied in full on page 15a of the petition, incorporated by reference all the terms of the shipping company's charterparty with petitioner, including the arbitration provision.

3. Plainly it was recognized by the courts below that both respondent and its vessel (not claimed to have been demised to Commodex, the asserted "long-term charterer," or to anybody else) were bound as of course by the bills of lading issued to petitioner by respondent's shipmaster (*The Themis*, 2 Cir., 275 F. 254 at 262; *The Capitaine Faure*, 2 Cir., 10 F. 2d 950, 963; Judge Bick's memorandum on reargument, petition, p. 11a; Judge Waterman's opinion, petition, p. 4a).

Arbitration was denied solely on the ground that respondent was not originally a party to the charterparty by all of whose provisions it expressly agreed to be bound (D. C., petition, 11a; C. A. 4a).

Despite respondent's ill-advised assertions on the subject, the decisions below are contrary to the decision in the *Marine Transit* case, *supra*, 284 U. S. 263, and to the principles repeatedly recognized by the courts of New York in the decisions cited at the top of page 12 of the petition.

In view of the simplicity of the undisputed facts and the clarity of the controlling law, the summary reversal of the judgments below, with an order for the direction of arbitration, would seem to be warranted.

Petitioner has anticipated, on pages 15-17 of the petition, respondent's comments regarding the application of the Carriage of Goods by Sea Act to bills of lading issued by a private carrier to the contracting shipper where the bills have not been negotiated or transferred.

It is respectfully submitted that the writ should be granted.

October 25, 1957.

JOHN C. CRAWLEY,
Counsel for Petitioner.